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92 of the present Articles of War, enacted August 29, 1916. See 39 St. at L. ch. 418, sec. 3. Under prior legislation courts-martial were not without jurisdiction to deal with capital crimes as acts prejudicial to good order and military discipline, but the military authorities, except in time of war, were obliged to surrender the accused, upon application being duly made, for trial by the civil courts. See *Ex parte Mason* (1882) 105 U. S. 696; *In re Stubbs* (1905, C. C. D. Wash.) 133 Fed. 1012; *Grafton v. United States* (1907) 206 U. S. 333, 27 Sup. Ct. 749. A similar preference (with certain exceptions) is given to civil tribunals under Article 74 of the present Articles of War. But such preference is limited to times of peace. In time of war courts-martial as well as civil courts have jurisdiction over crimes committed by soldiers. In such a case, should the tribunal which first takes jurisdiction be allowed to keep it on the basis of comity, or must the civil authorities yield to the military and surrender the accused for trial by court-martial? The principal case is the first decision which squarely answers that the civil authorities must surrender the soldier, if demanded, to his officers. It is believed that the decision is sound. The court intimates that there is a question under the existing Articles of War whether the jurisdiction of the military tribunals is not exclusive in time of war. If such is the true interpretation of the statute it would doubtless be constitutional. See *dictum* in *Coleman v. Tennessee* (1879) 97 U. S. 509, 514. But the court preferred to decide the case merely on the ground that in time of war courts-martial are entitled to priority if the offender is demanded for military trial.

DECEIT—STATEMENT OF VALUE AS FRAUDULENT REPRESENTATION.—The defendants induced the plaintiff to allow them to exchange her property for a farm which they said they knew to be worth $30,000. The defendants knew the value to be much less as they had been unsuccessful in trying to sell it for a smaller sum. It was contended that the statement as to value was a mere expression of opinion and so not actionable. *Held,* that the plaintiff could recover in an action of deceit. *Southern Trust Co. v. Lucas* (1917, C. C. A. 8th) 245 Fed. 286.

The courts usually construe statements of the value of property to be mere expressions of opinion and not statements of fact. *Hecht v. Metzler* (1897) 14 Utah 408, 48 Pac. 37; *Gustafson v. Rustemeyer* (1898) 70 Conn. 125, 39 Atl. 104. The actual value of the property is of course a fact. *Pratt v. Allegan Circuit Judge* (1913) 177 Mich. 558, 143 N. W. 890. But an expression of opinion also states a fact, namely, the belief of the speaker that the land is worth a certain amount. Where both parties have equal means of knowledge an action usually will not lie for an alleged misrepresentation of the actual value, the courts holding that the speaker is merely expressing his opinion and that the other party is not entitled to rely upon it. *Clark v. Rice* (1906) 127 Wis. 451, 106 N. W. 231; *Lilienthal v. Suffolk Brewing Co.* (1891) 154 Mass. 185, 28 N. E. 151. But if the statement of belief is knowingly false and the circumstances are such as to justify reliance upon it as an honest statement of the speaker's true opinion, it may be a misrepresentation of an essential fact and the basis of an action for deceit. *Olston v. Oregon Water Power Co.* (1908) 52 Oreg. 343, 96 Pac. 1095; *Crompton v. Beedle* (1910) 83 Vt. 287, 75 Atl. 331. In the principal case the court found as a fact that confidential relations had been established, from which the conclusion properly followed that the defendants were liable for misleading the plaintiff.

EVIDENCE—CHARACTER OF DEFENDANT—PRESUMPTION OF GOOD CHARACTER.—In a criminal trial in a federal District Court, no evidence as to the character of the defendant having been introduced, the judge refused to charge the jury that the accused was presumed to be a person of good character and that this pre-

sumption should be considered as evidence in his favor. *Held,* that the court rightly refused to give the requested charge. McKenna, J. *dissenting. Greer v. United States* (1918) 38 Sup. Ct. 209.

It is elementary that in a criminal case the prosecution cannot attack the character of the accused unless he himself introduces evidence in support of his good character. 4 Chamberlayne, *Evidence,* secs. 3275, 3277; 1 Wigmore, *Evidence,* secs. 56-58. No inference of bad character may be drawn from the prisoner's failure to introduce evidence of good character. *State v. Dockstader* (1876) 42 Ia. 436; *State v. O'Neal* (1847) 29 N. C. 251. Some courts have held that the defence is entitled to a statement that there is a presumption of good character. *Goggans v. Monroe* (1860) 31 Ga. 331; *Stephens v. State* (1886) 20 Tex. App. 255. But in these cases the prosecution had attacked the character of the accused in addressing the jury. A larger number of state courts have held that there is no presumption of good character. *Danner v. State* (1875) 54 Ala. 127; *Addison v. People* (1901) 193 Ill. 405, 62 N. E. 235. The lower federal courts were in conflict on the subject. See *Price v. United States* (1914, C. C. A. 8th) 218 Fed. 149, L. R. A. 1915 D, 1070; *Mullen v. United States* (1901, C. C. A. 6th) 106 Fed. 892. The principal case is the first decision of the United States Supreme Court upon the question, and in refusing to recognize the presumption it reaches a sound conclusion. Such a presumption, if recognized, should clearly be rebuttable; a conclusive presumption of good character in criminal cases would be absurd. But under the established rule above stated, in regard to the admissibility of character evidence, the accused could as a practical matter make the presumption irrebuttable, by refusing to present any character evidence and simply relying on the presumption. The rule which puts it wholly in the hands of the defendant whether or not to open the question, and denies any adverse inference from his silence, gives him quite sufficient advantage on this issue, without raising any affirmative presumption in his favor. The courts which have supported such a presumption have apparently confused it with the "presumption of innocence" doctrine. See 2 Chamberlayne, *Evidence,* sec. 1168.

HUSBAND AND WIFE—ESTATE BY ENTIRETIES—LIMITATION OVER TO HEIRS OF ONE.—A deed named a husband and wife as grantees "of the second part." The grant and habendum were "to the party of the second part, *her* heirs and assigns." *Held,* that under the deed the husband took an estate by entirety with the wife for his life with right of survivorship, and that "to the estate of the wife there was added a limitation over to her heirs, so that the plaintiff as her heir took in fee the entire estate, with right of possession after the death of" the husband. *Kimble v. Mayor, etc., of Newark* (1917, N. J. Ct. Err.) 102 Atl. 637.

At common law a deed to A and B jointly and to the heirs of B was regarded as creating a good jointure, with a life estate in A and a fee simple in B. *Co. Litt.* sec. 285; *Sprinkle v. Spainhour* (1098) 149 N. C. 223, 62 S. E. 910. Though the language is not entirely clear, this was apparently the view adopted in the principal case, substituting, of course, an estate by entireties for a joint tenancy. But the courts in deciding these cases have given A, upon B's death, the entire estate for life, B's heirs getting no enjoyment of the estate until A's death. *Den v. Hardenbergh* (1828, Sup. Ct.) 10 N. J. L. 42; *Breed v. Osborne* (1873) 113 Mass. 318; *Sprinkle v. Spainhour, supra.* In effect, therefore, the courts have treated such deeds as creating a joint life estate in A and B, with a remainder in fee to B and his heirs, rather than as creating a present fee in B. Apparently, in calling B's estate a present fee, the courts have been influenced by the rule that a life estate followed by a remainder in fee in the same person merges to form a present fee simple. But the case of joint estates forms a logical exception to this rule, and particularly in the case of estates by entireties; for